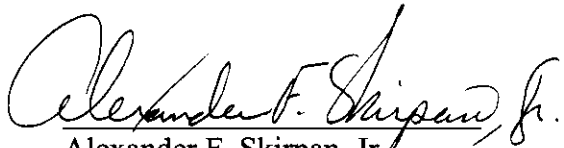


This matter is now before the FCC. The Hearing Examiner's Report, which is part of the Commission's consultative report, summarized the record before this Commission and explained the basis of any recommendations.¹⁹ The focus of the Commission's consultative report was on what was and continues to be in place in Virginia.²⁰ Thus, the arbitrations before the FCC did not form the basis for the recommendations contained in the report. Verizon opposes reopening the record to consider the *FCC Arbitration Decision*, and has chosen to go forward with its application before the FCC. Any risk that the *FCC Arbitration Decision* has rendered the Commission's report irrelevant or that the Commission has failed to fulfill its consultative obligations appears to rest upon Verizon.

Moreover, I agree with Verizon's argument that any § 271 issues raised by the *FCC Arbitration Decision* are best raised directly before the FCC. WorldCom and AT&T essentially ask this Commission to reopen the record to determine if an FCC arbitration decision has changed FCC-established standards for § 271 review and authority. Since the FCC will make the final determination in this matter, has established all of the underlying standards, and will give all parties an opportunity to raise issues related to the *FCC Arbitration Decision*, I find the record should not be reopened before this Commission in this matter. Accordingly,

IT IS DIRECTED that the motions by WorldCom, Cavalier, and AT&T to reopen this record are hereby denied.


Alexander F. Skirpan, Jr.
Hearing Examiner

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to all persons on the official Service List in this matter. The Service List is available from the Clerk of the State Corporation Commission, c/o Document Control Center, 1300 East Main Street, First Floor, Tyler Building, Richmond, Virginia 23219.

¹⁹ Hearing Examiner's Report at 23.

²⁰ *Id.*

LL. DPL ISSUE NO. 38

SWBT: Whether SWBT must provide CoServ access to unterminated dark fiber in all remote terminals as a UNE. Whether the dark fiber UNE includes unlit fiber optic cable that has not yet been terminated in a LGX or FDI panel.

COSERV: Whether SWBT will be permitted to so restrictively define and make available dark fiber so as to render its availability in the contract illusory and meaningless.

(a) CoServ's Position

It was CoServ's position that unterminated dark fiber is "in place" or "easily called into service". CoServ believed that SWBT erroneously concluded that unterminated dark fiber does not meet the FCC's definition of dark fiber because it is not "in place and easily called into service."⁴⁷² CoServ pointed out that SWBT's own witness testified that unterminated fiber is "easily called into service" when he explained that it would take only one day or one night to terminate unterminated dark fiber.⁴⁷³ Therefore, because unterminated dark fiber is fiber that has not been activated through connection to electronics that light it and it is in place and easily called into service, it falls squarely within the FCC's definition of what constitutes "dark fiber". Consequently, CoServ argued, SWBT is required to provide both unterminated and terminated dark fiber to CoServ under the *UNE Remand Order*.⁴⁷⁴

According to CoServ, the limitation to Pronto sites is completely artificial and has no basis in network engineering or technical feasibility. CoServ argued that if this is appropriate at Pronto sites, there is no reason it would not be appropriate at other sites.⁴⁷⁵ CoServ believed that there is no valid reason why SWBT should be able to pick and choose particular sites to unilaterally decide whether it will choose to terminate unterminated dark fiber.

⁴⁷² CoServ Initial Post-Hearing Brief at 62, citing SWBT Ex. 2 at 26.

⁴⁷³ *Id.* at 63, citing Tr. at 198, lines 18-25.

⁴⁷⁴ *Id.* at 63.

⁴⁷⁵ CoServ Ex. 6, Walker Rebuttal, at 14-15.

CoServ also argued that it was generally more efficient and cost-effective to terminate all of the fiber in a transmission route at one time.⁴⁷⁶ CoServ did not agree with SWBT's position that it is under no obligation to provide unbundled access to dark fiber that it has run between locations in its network if SWBT has not terminated the dark fiber at each location.

CoServ expressed the belief that, under SWBT's current construction practices, SWBT only terminates fiber that it needs at the time, leaving the remaining idle fiber strands unterminated, and therefore unavailable to competitors like CoServ.⁴⁷⁷ CoServ argued that the contract provisions proposed by SWBT would allow SWBT to manipulate the system by simply leaving dark fiber unterminated. CoServ argued that SWBT could unterminate existing fiber that was terminated to keep it out of the hands of SWBT's competitors.⁴⁷⁸

CoServ did not agree with SWBT's argument that it was not attempting to avoid providing CoServ the same information and provisions regarding dark fiber provided to Waller Creek in accordance with Docket No. 17922. CoServ maintained that this Commission in the Waller Creek arbitration carefully and thoughtfully ordered a number of important competitive protections to insure that such dark fiber availability was meaningful. CoServ argued that SWBT does not point to anything in the FCC's UNE Remand Order that undercuts the Waller Creek award. CoServ believed that the FCC's Order seemed to underscore and bolster the importance of this Commission's order in Waller Creek because it demonstrated the FCC's recognition of the importance of dark fiber on a national basis to the development of competition in the marketplace.⁴⁷⁹

CoServ asserted that the right to obtain dark fiber was illusory if an incumbent LEC can leave dark fiber unterminated and then refuse to make such dark fiber available to CLECs.⁴⁸⁰

⁴⁷⁶ CoServ Ex. 5, Walker Direct, at 5.

⁴⁷⁷ *Id.*

⁴⁷⁸ CoServ Ex. 6, Walker Rebuttal, at 15-16.

⁴⁷⁹ *Id.* at 16.

⁴⁸⁰ CoServ Ex. 5, Walker Direct, at 6.

As a result, CoServ proposed to list specific dark fiber segments in SWBT's network that would be available to CoServ, including interoffice fiber and feeder and distribution loop fiber facilities to remote terminals, remote switching modules, and customer locations.⁴⁸¹

CoServ proposed that SWBT allow CoServ, where technically feasible, to terminate the fiber using appropriately approved and safe practices and technicians in accordance with industry standards and at its expense. In the alternative, CoServ argued that its proposal to require SWBT to terminate the fiber and splice through any unspliced segments to establish A-to-Z continuity for CoServ's use, subject to the full cost reimbursement from CoServ, is accordance with the standards of the Act and the Commission's rules.⁴⁸²

CoServ argued that the Commission should consider fusion joints and termination of dark fiber as two separate issues. CoServ did not believe that it would be necessary to open a splice case to allow a fusion splice between CoServ's fiber and SWBT. CoServ explained that Litespan RTs have a "fiber splice tray" where fusion joints can and are made safely and easily. CoServ argued that this can be ordered separately and installed in the field after the RT is in service if the tray was not part of the initial installation.⁴⁸³

CoServ argued that the supposed availability of dark fiber does nothing if reasonable advanced information about its location is not provided to CoServ. CoServ stated that this Commission has already agreed with this position in the *Waller Creek* arbitration case. CoServ argued that, in order to utilize dark fiber and incorporate its use into its business plans, it must be able to know where and how it presently exists in the network in order to develop its business and network plans.

⁴⁸¹ *Id.* at 9.

⁴⁸² *Id.* at 5-6.

⁴⁸³ CoServ Ex. 6, Walker Rebuttal, at 15.

(b) SWBT's Position

SWBT argued that it is only obligated to provide access to unterminated dark fiber at Pronto NGDLC (Next Generation Digital Loop Carrier) remote terminals. Otherwise, consistent with the FCC's mandate in ¶ 328 of the UNE Remand Order, SWBT stated that it is only obligated to provide dark fiber as a UNE if the fiber connects two points in SWBT's network. SWBT also stated that it does not have an obligation to provide access to unlit fiber optic cable that has not yet been terminated. In the UNE remand Order, the FCC stated that in order to be considered the dark fiber UNE, the fiber must connect two points in the network.⁴⁸⁴

SWBT noted that CoServ based its request and arguments on the Arbitration Award from the SWBT/Waller Creek arbitration, Docket No. 17922. SWBT argued that the arbitration award in Docket No. 17922 preceded the FCC's rendering of its UNE Remand Order, which first defined the dark fiber product as a UNE and that the requirements of providing a dark fiber UNE were not effective until May 17, 2000.⁴⁸⁵ According to SWBT, the FCC made the decision that the dark fiber that must be made available is in place or deployed, unlit fiber optic cable. Therefore, SWBT argued that CoServ's proposal to expand the definition to include dark fiber that is not terminated exceeds the requirements of the FTA and the FCC's definition.⁴⁸⁶ SWBT claimed its definition of dark fiber is not limiting, or conflicting with law. Rather, it properly reflected the FCC's interpretation of the required UNE offering.⁴⁸⁷

Further, SWBT argued that the FCC, in Docket No. 98-141, determined that SBC would be required to terminate fiber in those remote terminals or adjacent cabinet structures where Next Generation Digital Loop Carrier (NGDLC) has been deployed that will support both POTS and xDSL services. SWBT pointed out that the FCC explicitly limited SWBT's requirement to those locations where NGDLC has been deployed to provide both POTS and xDSL services.⁴⁸⁸

⁴⁸⁴ Jt. Ex. 1, DPL, at Issue 38.

⁴⁸⁵ SWBT Ex. 2, Gonterman Direct, at 25.

⁴⁸⁶ *Id.* at 26-27.

⁴⁸⁷ SWBT Ex. 8, Gonterman Rebuttal, at 7.

⁴⁸⁸ SWBT Ex. 2, Gonterman Direct, at 27.

SWBT expressed its concern that CoServ may be suggesting that a splice be made at Optical Digital Signal Cross Connect panels (LGX panels) that are designed to connect terminated fibers to one another through the use of fiber patch cords/fiber cross connects that also have terminations on them. According to SWBT, these panels are not designed for splicing fiber optic strands within cables to other fiber optic strands within cables.⁴⁸⁹ It was SWBT's contention that splicing fibers at points not designed for splicing could have serious implications on the reliability of both the spliced fiber connection CoServ seeks, as well as unrelated terminated fiber connections for other CLEC and SWBT services.⁴⁹⁰

SWBT argued that if it were required to provide CoServ access at splice cases, it could take hours of preparation time (i.e., pumping water out of manholes, ventilating manholes) before the splice cases could be accessed. Since splice cases are not designed for frequent reentry, much time is spent opening these cases, in order to attempt to protect the fiber that is contained within. SWBT asserted that every time work is done in one of these splice cases there is a risk of damaging the exposed and delicate fibers that are normally protected by the cable sheath and splice cases.⁴⁹¹ SWBT explained that in addition to the technical complications and risks associated with removing a splice case to gain access to individual fiber strands, such requirement does not comply with the FCC's ILEC obligations encompassed by Section 251(c)(3) of the Act.⁴⁹²

SWBT explained that Fiber Distribution Frames (FDFs) are designed for easy access for connecting and testing fibers. These frames have Optical Digital Cross Connect Panels (LGX panels) that have optical termination points for easy and reliable connection to the fiber. SWBT asserted that these are readily accessible, and are usually in controlled environments. The panels

⁴⁸⁹ SWBT Ex. 4, Oyer Direct, at 7.

⁴⁹⁰ *Id.* at 7.

⁴⁹¹ *Id.* at 8.

⁴⁹² SWBT Ex. 2, Gonterman Direct, at 28.

are used to connect SWBT's terminated fiber to other terminated fibers, as well as to multiplexing equipment.⁴⁹³ SWBT maintained that these panels and connections make logical demarcation points, so that trouble can be quickly and easily isolated into the respective networks and installation work can be performed without jeopardizing other services.⁴⁹⁴

SWBT stated that its current policy with respect to the termination of dark fiber is to terminate all fiber building entrance facilities on a fiber termination panel. This includes fiber placed into RT locations, controlled environment vaults and at customer premises. SWBT stated that it does not deliberately leave fiber unterminated to render it unavailable to CLECs.⁴⁹⁵

Further, SWBT asserted it has agreed to terminate dark fiber in limited circumstances. As a voluntary commitment to the FCC in the Merger Conditions related to Project Pronto, SBC committed, in response to a completed SCA, to terminate available spare fiber for CLECs where the ILEC has deployed a NGDLC architecture that supports both voice and DSL. The only Remote Terminal (RT) locations that have such capabilities are the RTs associated with Project Pronto.⁴⁹⁶ SWBT stated that CoServ sought to unreasonably expand this voluntary commitment by requiring SWBT to terminate dark fiber at all RT locations.⁴⁹⁷

SWBT claimed that CoServ's proposal would deprive SWBT of the ability to strategically plan its network as far as determining where to deploy its fiber and in what quantities to terminate that fiber. Additionally, SBT argued, CoServ's proposal would force SWBT to utilize inefficient deployment strategies in its network that are dictated by CLEC demands. SBWT argued that this would dissuade it from deploying any fiber in its network if

⁴⁹³ SWBT Ex. 4, Oyer Direct, at 9.

⁴⁹⁴ *Id.*

⁴⁹⁵ SWBT Ex. 10, Oyer Rebuttal, at 3.

⁴⁹⁶ SWBT Ex. 4, Oyer Direct, at 11.

⁴⁹⁷ *Id.*

those facilities could not be configured in an efficient manner to achieve SWBT's ultimate deployment strategy.⁴⁹⁸

(c) Arbitrators' Decision

Before ruling on this issue, it is necessary to first determine what constitutes dark fiber UNE. First, the FCC found in the UNE Remand Order that LECs must provide access to unbundled loops to help promote competition. Specifically, the FCC states:

We conclude that LECs must provide access to unbundled loops, including high-capacity loops, nationwide. We find that requesting carriers are impaired without access to loops, and that loops include high-capacity lines, dark fiber, line conditioning, and certain inside wire. Requiring carriers to obtain loops from alternative sources would materially raise costs, delay broad-based entry, and limit the scope and timeliness of the competitor's service offerings.⁴⁹⁹

The FCC then modified the loop definition to include dark fiber.

We also modify the loop definition to specify that the loop facility includes dark fiber. Dark fiber is fiber that has not been activated through connection to the electronics that "light" it, and thereby render it capable of carrying communications services. Because it is in place and easily called into service, we find that dark fiber is analogous to "dead count" or "vacant" copper wire that carriers keep dormant but ready for service. ...We find, therefore, that dark fiber and extra copper both fall within the loop network's element's "facilities, functions, and capabilities."⁵⁰⁰

The Arbitrators find that the combination of these two decisions demonstrates that part of the underlying intention of the FCC was to make dark fiber UNE more accessible to competitors. The Arbitrators believe the FCC attempted to make ILEC dark fiber readily accessible to CLECs in order to foster competition.

⁴⁹⁸ SWBT Ex. 10, Oyer Rebuttal, at 3.

⁴⁹⁹ UNE Remand Order at ¶ 165.

⁵⁰⁰ *Id.* at ¶ 174.

The Arbitrators further rely on Paragraph 325 of the UNE Remand Order to define dark fiber. Specifically, the FCC states:

[D]ark fiber is fiber which has not been activated through connection to the electronics that “light” it and render it capable of carrying telecommunications services. To provide additional capacity, new electronics are attached to previously “lit” fiber or to previously “dark” fiber. Because dark fiber is already installed and easily called into service, we find that it is similar to the unused capacity of other network elements, such as switches or “dead count” or “vacant” copper wire that is dormant until carriers put it in service.

SWBT interprets the above order to mean that fiber must be “terminated” to constitute dark fiber. The Arbitrators disagree. The FCC clearly defined dark fiber to include that fiber which “is in place and easily called into service.” The Arbitrators find that the evidence supports a holding that dark fiber which is deployed but not yet terminated is also dark fiber that can easily be called into service.

SWBT also relied on Paragraph 328 of the UNE Remand Order. Specifically, the FCC states:

We acknowledge that it would be problematic if some facilities that the incumbent LEC customarily uses to provide service were deemed to constitute network elements (e.g., unused copper wire stored in a spool in a warehouse). Defining such facilities as network elements would read the ‘used in the provision language’...too broadly. Dark fiber, however, is distinguishable from this situation in that it is physically connected to the incumbent’s network and easily called into service. Thus, as indicated above, we conclude that dark fiber falls within the statutory definition of a network element.”

The Arbitrators again find that SWBT incorrectly interprets the FCC’s intention. SWBT states that, consistent with the FCC’s mandate in Paragraph 328, it is only obligated to provide dark fiber as a UNE if the fiber connects two points in SWBT’s network.⁵⁰¹ The Arbitrators, however, agree with CoServ’s argument that “connectivity does not equal termination.”⁵⁰² Consequently, the Arbitrators find that the UNE Remand Order discussed connectivity in the

⁵⁰¹ Jt. Ex. 1, DPL, at Issue 38.

⁵⁰² CoServ Reply Brief at 26.

*context of distinguishing dark fiber that was already "in place and called into service" from the example of unused copper wire "stored in a spool in a warehouse."*⁵⁰³

SWBT also relies on Paragraph 324 of the UNE Remand Order. Specifically, the FCC states:

Notwithstanding the fact that we require incumbents to unbundle high-capacity transmission facilities, we reject Sprint's proposal to require incumbent LECs to provide unbundled access to SONET rings. In the Local Competition First Report and Order, the Commission limited an incumbent LEC's transport unbundling obligation to existing facilities, and did not require incumbent LECs to construct facilities to meet a requesting carrier's requirements where the incumbent LEC has not deployed transport facilities for its own use. Although we conclude that an incumbent LEC's unbundling obligation extends throughout its ubiquitous network, including ring transport architectures, we do not require incumbent LECs to construct new transport facilities to meet specific competitive LEC point-to-point demand requirements for facilities that the incumbent LEC has not yet deployed for its own use.

SWBT argues that it is not required to construct facilities as a result of terminating fiber for CoServ. The Arbitrators find that terminating dark fiber does not constitute constructing new transport facilities. The UNE Remand Order addresses the issue of constructing additional facilities in the context of meeting a requesting carrier's requirements where the ILEC has not deployed transport facilities for its own use. The Arbitrators find that CoServ is not asking for SWBT to construct additional facilities. CoServ is only asking for access to dark fiber in those facilities that SWBT has already deployed.

*Further, SWBT contended that the FCC's Pronto Order limits SWBT's obligation to terminate fiber and make it available as dark fiber only in those places where it has provisioned Pronto along with xDSL and POTS.*⁵⁰⁴ *Specifically, the FCC states:*

Where SBC/Ameritech deploys new fiber feeder facilities to support a NGDLC architecture that supports both POTS and xDSL services and in response to a completed SCA, the SBC/Ameritech incumbent LECs will terminate available

⁵⁰³ *Id.*

⁵⁰⁴ Tr. at 214.

spare dark fiber for telecommunications carrier(s) having equipment located at such remote terminal sites or adjacent cabinet structures consistent with applicable Commission rules.⁵⁰⁵

The Arbitrators notice that the Pronto Order only addresses issues related to sites relevant in Project Pronto. The Pronto Order does not limit SWBT in any way as far as termination of dark fiber at sites other than those where it has provisioned Pronto along with xDSL and POTS. The Arbitrators find that SWBT has not provided sufficient evidence supporting its position to not terminate fiber in addition to those places where it has provisioned Pronto. Consequently, the Arbitrators find that SWBT is not technically limited in its ability to terminate dark fiber at other sites.

The Arbitrators also find that simply because the Waller Creek Arbitration Award preceded the FCC's UNE Remand Order, does not render any of the decisions in that award with regard to dark fiber inconsequential. In fact, the Arbitrators find that the decisions reached in the Waller Creek Arbitration can aid in the decision of what constitutes dark fiber UNE.

In the Waller Creek Arbitration, "SWBT's witness testified, however, that dark fiber requests have been denied because there was 'zero dark fiber'. SWBT also agreed to modify its definition of 'dark fiber' to include un-terminated dark fiber placed in SWBT's outside plant which appears to have alleviated those fiber rejections."⁵⁰⁶

The Arbitrators notice that both parties have agreed that terminating all fibers at the same time is efficient and cost-effective.

Relying on the reasoning above, the Arbitrators conclude that SWBT be required to include unterminated fiber as dark fiber.

⁵⁰⁵ Pronto Order, Appendix A at 40.

⁵⁰⁶ Waller Creek, at 13.

Regarding the issue of splicing, the Arbitrators disagree with CoServ's request to seek broad rights to splicing. Splicing, as requested by CoServ, creates the risk of impairment to the telecommunications services of others since the activity risks cutting lit fiber in use by others. In Waller Creek, the Arbitrators relied on Commission precedent broadly requiring cross-connects, including fiber cross-connects, to be provisioned at a termination point in a hut, controlled environment vault, or cabinet.⁵⁰⁷ Therefore, the Arbitrators rule that Commission precedent regarding splicing be followed in this proceeding.

Based on the preceding analysis, the Arbitrators propose the following contract language:

8.16.3 In response to a completed SCA, SBC-12STATE will terminate dark fiber where fiber optic cable has been deployed in conjunction with SBC's "Project Pronto" at NGDLC remote terminals. This provision only applies if the "Pronto" fiber has been spliced in all segments and terminated in the Central Office but left un-terminated in the remote terminal.

13.1 In SBC-12STATE Dark fiber is deployed, unlit fiber optic cable that connects two points within the incumbent LEC's network. Dark fiber is fiber that has not been activated through connection to the electronics that "light it", and thereby render it capable of carrying communications services. Dark fiber also includes unlit fiber optic cable that has not yet been terminated on an LGX or FDI panel or other appropriate device. Other than as specifically set out elsewhere in this agreement, SNET does not offer Dark Fiber under this agreement. Rather, Dark Fiber is available as described in Section 18.2.1E of the Connecticut Service Tariff.

13.1.1 Access to dark fiber includes access to unlit fiber available between two specific points within the SBC-12STATE network. This includes interoffice fiber, feeder and distribution loop fiber facilities to digital loop carrier remote terminals (DLC-RT) (regardless of whether the RT is associated with "Project Pronto" or not), remote switching modules (RSMs), and to customer locations. Dark Fiber is fiber that is spliced in all segments from end to end and would provide continuity or "light" end to end. CLEC may only subscribe to dark fiber that is considered "spare," as defined in Sections 13.4.1 and 13.5.1, below.

13.1.2 SBC-12STATE will make available to CLEC dark fiber facilities based on the facilities cross-section of all fibers between "A" and "Z" locations regardless as to whether the fiber is terminated or not. If dark fiber is not terminated, SBC-12STATE will terminate the fiber, and CLEC will pay SBC-12STATE's reasonable costs in connection with such activities.

⁵⁰⁷ *Id.* at 30.

13.1.3 To determine the actual fibers available, SBC-12STATE will allow CLEC to access the Plant Location Records (PLR) to ascertain a count of the total installed fibers between the "A" and "B" locations. If necessary SBC-12STATE will then provide information from the Trunks Integrated Records Keeping System (TIRKS), or any equivalent system, prepared by SBC-12STATE personnel to identify the total number of (lit) fibers in service.

MM. DPL ISSUE NO. 39

This DPL issue, involving UNE Appendix §§ 9.1 and 9.2.6, relating to ECS as voluntary offering, has been resolved by the parties.⁵⁰⁸

NN. DPL ISSUE NO. 40

Whether SWBT must provide CoServ detailed dark fiber inventory information.

(a) CoServ's Position

CoServ argued that SWBT refuses to tell CoServ where its dark fiber is located. CoServ argued that if SWBT responds that there is no dark fiber available for the route requested, there is no way for CoServ to question or confirm SWBT's determination. CoServ opined that this becomes particularly problematic due to SWBT's policy of not considering unterminated dark fiber or fibers that have not been spliced through to be dark fiber. In addition, CoServ argued that SWBT may deny the availability of dark fiber between two locations based on CoServ's route request, but there still may still be an alternative route that SWBT does not disclose.⁵⁰⁹

CoServ asserted that SWBT's piecemeal disclosure of the location and availability of dark fiber leaves CoServ without any effective information source to include dark fiber in any of its long term network planning. CoServ proposed that SWBT provide it with access to necessary plant location record and other information that will allow CoServ to determine for itself where available dark fiber is located in SWBT's network. CoServ believed that it should not have to rely on SWBT to respond to individual inquiries about dark fiber routes, nor rely on the

⁵⁰⁸ See Jt. Ex. 1, DPL.

⁵⁰⁹ CoServ Ex. No. 5, Walker Direct, at 7-8.

unverified and undocumented representations of what is essentially its largest competitor in order to have meaningful access to unbundled dark fiber.⁵¹⁰

CoServ did not agree with SWBT's position that CoServ's proposal would require SWBT to provide privileged and confidential information about dark fiber inventory, asserting that all CoServ sought was reasonable information about where dark fiber exists in order to meaningfully plan and order it. CoServ stated that it did not desire the names of other CLECs using dark fiber, nor did CoServ have any interest or need to learn about SWBT's customer opportunities or business plan. CoServ stated that reasonable information about the location of dark fiber could be provided to it in a way that would not require revelation of SWBT's business plans.⁵¹¹

According to CoServ, *Waller Creek* provided that SWBT cooperate with the CLEC to determine the availability of dark fiber, which includes access to maps (Plant Location Records, or PLRs) and data showing such availability, as well as access to reports from the TIRKS database.⁵¹² CoServ noted that SWBT claimed that it was not required to provide this type of information to CoServ regarding dark fiber, and further, that CoServ may obtain the information it is requesting from a worldwide repository called "CLONES."⁵¹³

CoServ argued that CLONES could not be used to locate dark fiber. CoServ asserted that CLONES was designed to prevent duplication of CLLI codes between different carriers and that it was never intended to be a means of locating dark fiber. CoServ further explained that CLONES provides a unique CLLI code for each site, identifies the carrier that established the site, and will sometimes indicate the nature of the site. CoServ argued that CLONES provides no information as to whether there is any dark fiber at that site, or for that matter, any fiber at all.

⁵¹⁰ *Id.* at 8.

⁵¹¹ CoServ Ex. No. 6, Walker Rebuttal, at 17.

⁵¹² CoServ Initial Post Hearing Brief at 68, citing *Waller Creek Arbitration Award* at 5-6, 8.

⁵¹³ *Id.*, citing SWBT Exhibit 4 (SWBT Ex. 4), Direct Testimony of Tim Oyer, at 12.

At best, CoServ explained, CLONES is an indicator useful for locating central offices, but limited when it comes to remote sites.⁵¹⁴

CoServ stated that CLONES participation is entirely voluntary and that there is nothing to require SWBT to keep CLONES updated, or updated with accurate information in a highly competitive situation. CoServ argued there was no test for accuracy or omissions of the CLONES system. CoServ also believed that SWBT could decide to omit key data or use varying means of identification. In such situations, CoServ argued that it might be difficult and often impossible to identify which CLLI code is associated with which subscriber and what service is being provided.⁵¹⁵

CoServ stated that it would like some documentation supporting SWBT's wishes to reserve dark fiber for its own use.⁵¹⁶ CoServ asked that the dark fiber inventory information requirements set forth previously by the Commission in the *Waller Creek* arbitration be followed. SWBT has asserted without any meaningful support that *Waller Creek* should not apply in this instance, but should apply with respect to the 25% limitation on available dark fiber. CoServ opined that either *Waller Creek* is valid Commission precedent or it is not – *Waller Creek* should not apply only where SWBT says it should.⁵¹⁷

(b) SWBT's Position

SWBT argued it has no obligation to inventory its dark fiber or provide CLEC information about the location of dark fiber. Doing so involves revealing confidential or proprietary information.⁵¹⁸

⁵¹⁴ CoServ Ex. No. 6, Walker Rebuttal, at 18.

⁵¹⁵ *Id.* at 19.

⁵¹⁶ *Id.*

⁵¹⁷ CoServ Initial Post Hearing Brief at 68.

⁵¹⁸ Jt. Ex. 1, DPL, at Issue 40.

SWBT argued that most of the information CoServ is requesting from SWBT is readily available to CoServ. CLONES is a worldwide repository developed by Telcordia Technologies to provide the information that CoServ is requesting. The CLONES database has the Common Carrier Location Codes (CLLI) for SWBT as well as most other telecommunication providers.⁵¹⁹ SWBT stated that this is the same system SWBT uses to obtain CLLI codes and that all of the locations where SWBT has deployed equipment are in this database. This database allows licensees to search by responsible company, equipment type, geographic location, and many other criteria and will give users CLLI, address, town, name, and horizontal and vertical coordinates (where they are known) for Central Offices, RSMs, remote terminals, and customer locations. SWBT states that CoServ currently possesses a license to access and utilize this database to gather information it is requesting from SWBT.⁵²⁰

SWBT claimed that CoServ has recently added its request to access Plant Loop Records (PLRs).⁵²¹ SWBT explained that engineers use these records to find dark fiber for CLECs in response to an ASR submitted for a facility check. PLRs contain proprietary information that could be utilized by a CLEC to locate potential customers for targeting its marketing efforts, allowing it to target end users of other CLECs and SWBT. SWBT argued that it has no obligation to provide CoServ access to its detailed network plans and wholesale and retail customer information.⁵²²

SWBT stated that since the *Waller Creek* proceeding, SWBT's dark fiber inquiry process has evolved so that CLECs can request information regarding the availability of dark fiber through a standard ASR process. It also claimed that SWBT personnel have detailed procedures to follow in querying the applicable databases and records to determine whether dark fiber is available, utilizing all alternate routes.⁵²³

⁵¹⁹ SWBT Ex. 4, Oyer Direct, at 12.

⁵²⁰ *Id.* at 12-13.

⁵²¹ SWBT provided no specific date. However, it appears that CoServ added its request to access the PLRs after it filed its original petition in this proceeding.

⁵²² SWBT Exhibit 10 (SWBT Ex. 10), Rebuttal Testimony of Tim Oyer, at 5.

⁵²³ *Id.* at 6.

SWBT asserted that some of the information CoServ is requesting contains privileged and confidential information pertaining to SWBT's network and customers. SWBT argued that providing CoServ with a detailed description of quantity and availability of dark fiber would provide CoServ a discriminatory advantage, revealing where SWBT had overbuilt its network to anticipate growth of large customers.⁵²⁴

SWBT maintained that it could not provide loss budget figures to CoServ. A loss budget is the maximum amount of signal degradation or loss that a network equipment element can tolerate before it becomes susceptible to errors or loss of signal. SWBT argued that electrical loss budget does not apply to fiber optic cable or to SWBT's dark fiber offering.⁵²⁵ If, however, CoServ is seeking a preliminary optical loss calculation, which is based on the length of the fiber optic cable, SWBT argued that CoServ can make the calculations on its own behalf.⁵²⁶

(c) Arbitrators' Decision

The Arbitrators find that SWBT is required to provide CoServ with the same information that was awarded to Waller Creek in the Waller Creek Arbitration Award. In the Waller Creek Arbitration Award, this Commission set certain guidelines for SWBT to follow in its provision of dark fiber information to CLECs.⁵²⁷ The Arbitrators note that SWBT has indicated that its dark fiber inquiry process has evolved over time.⁵²⁸ Given SWBT's continued development in its

⁵²⁴ SWBT Ex. 2, Gonterman Direct, at 30.

⁵²⁵ SWBT Ex. 4, Oyer Direct, at 13.

⁵²⁶ *Id.* at 13-14.

⁵²⁷ *Petition of Waller Creek Communications, Inc. for Arbitration With Southwestern Bell Telephone Company*, Docket No. 17922/20268 at 5. ("The Arbitrators conclude that SWBT must provide WCC access to PLRs indicating the location of fiber (actual maps and imaged/digitized versions through the Sun Workstations) at SWBT offices until such time as a dedicated Sun Workstation is permitted and established at each SWBT engineering location solely for CLEC use. In instances where the PLRs do not show the most recently completed fiber jobs in a geographic area, WCC will be advised of what facilities have been placed that are not reflected in the PLRs.")

⁵²⁸ SWBT Ex. 10, Oyer Rebuttal, at 6. ("Since the Waller Creek proceeding, SWBT's dark fiber inquiry process evolved so that CLECs can request information regarding the availability of dark fiber through a standard ASR process, and SWBT personnel have detailed procedures to follow in querying the applicable databases and records to determine whether dark fiber is available, utilizing all alternate routes.")

provision of dark fiber information to CLECs, along with the guidelines previously set forth by this Commission, the Arbitrators find that CoServ should at least be provided the same dark fiber inventory information that was awarded to Waller Creek.

With respect to SWBT's reluctance to be obligated to reveal confidential or proprietary information, the Arbitrators again rely on standards set forth in the Waller Creek Arbitration Award.⁵²⁹ The Arbitrators find no reason why SWBT should be obligated to divulge confidential or proprietary information when releasing dark fiber inventory. Moreover, this Commission contemplated and ruled on this issue in the Waller Creek decision.⁵³⁰ The Waller Creek decision essentially ruled against CLECs having direct access to SWBT's records; however, it did require SWBT to prepare reports from the TIRKS database, containing no confidential information, for requesting CLECs within five business days of the request. The Arbitrators find these standards to be in support of CoServ's request.

Therefore, the Arbitrators instruct the parties to formulate contract language to reflect the following:

- 1. SWBT will provide CoServ access to PLRs indicating the location of fiber. This access must be reasonable and no different than what it provides to other CLECs.*
- 2. In instances where the PLRs do not show the most recently completed fiber jobs in a requested geographic area, SWBT is instructed to advise CoServ of what facilities have been deployed but are not reflected in the PLRs.*
- 3. Additionally, SWBT shall provide CoServ reports from the TIRKS database prepared by SWBT within 5 business days of a CoServ request. SWBT and CoServ shall abide by confidentiality agreements aimed at preventing either party from inappropriately using the competitively sensitive information shared between them. Within 90 days from the date of this order, SWBT and CoServ shall jointly file a report concerning*

⁵²⁹ Docket No. 17922/20268 at 8. ("With respect to access to the TIRKS database, the Arbitrators conclude that direct access by WCC is not appropriate given the proprietary and confidential data contained in TIRKS database.")

⁵³⁰ Docket No. 17922/20268 at 8. ("...SWBT shall provide WCC reports from the TIRKS database prepared by SWBT within 5 business days of a WCC request.")

the procedures that they have put in place to protect customer-specific dark fiber information.

OO. DPL ISSUE NO. 41

What constitutes “spare fiber?”

(a) SWBT’s Position

SWBT argued that spare fiber did not include fiber documented as reserved by SWBT for utilization for growth within the 12-month period following the carrier’s request.⁵³¹

SWBT argued that spare fiber did not include that fiber it has determined necessary for its use within the next 12 months.⁵³² SWBT stated that it has constructed its fiber facilities (and installed dark fiber) based on long term multi-year forecasted customer demands. SWBT deploys fiber optic terminal equipment based on its 12-month forecast. SWBT explained that it’s proposed contract language allows it to reserve fiber strands while a system is being designed, and multiplexing equipment is ordered and installed. SWBT argued that it could not deploy any fiber if CLECs could lease the fiber before the jobs were complete, resulting in the need to deploy more fiber, with no assurance that SWBT could actually use the fiber.⁵³³

SWBT argued that ¶ 352 of the UNE Remand Order specifically addressed situations in which the ILEC is required to reserve dark fiber for internal forecasted growth, thus excluding it from the unbundling requirements. SWBT stated that it is its responsibility to prove that the amount of dark fiber that is withheld from an unbundling offering is required for its forecasted growth. SWBT maintained that it has the right to reserve dark fiber that has been deemed necessary for its growth.⁵³⁴

⁵³¹ Jt. Ex. 1, DPL, at Issue 41.

⁵³² SWBT Ex. 4, Oyer Direct, at 14.

⁵³³ *Id.* at 16.

⁵³⁴ SWBT Ex. 2, Gonterman Direct, at 32.

Edward B. Dinan
President

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Thomas L. Welch, Chairman
Public Utilities Commission
242 State Street
18 State House Station
Augusta, ME 04333-0018

Re: PUBLIC UTILITIES COMMISSION
Inquiry Regarding the Entry of Verizon Maine Into the
InterLATA (Long Distance) Telephone Market Pursuant
to Section 271 of the Telecommunications Act of 1996
Docket No. 2000-849

Dear Chairman Welch:

We have received the attached Public Utilities Commission letter dated March 1, 2002, in which the Commission states its intention, subject to Verizon Maine's satisfaction of certain specified conditions, to offer a favorable recommendation to the Federal Communications Commission in connection with Verizon Maine's application under Section 271 of the Telecommunications Act of 1996 to provide in-region, inter-LATA services in Maine. Verizon Maine will not contest, and will comply with, the Commission's conditions.

I would note that although the Commission does not explicitly approve in its March 1st letter the Carrier-to-Carrier Guidelines relating to the reporting of wholesale performance, Verizon understands that by approving the Performance Assurance Plan, the Commission is adopting those Guidelines.

Very truly yours,

Edward B. Dinan

Attachment

March 1, 2002

Edward Dinan, President & CEO
Verizon New England Inc., d/b/a Verizon Maine
1 Davis Farm Road
Portland, ME 04103

Re: Inquiry Regarding the Entry of Verizon-Maine into the InterLATA
Telephone Market Pursuant to Section 271 of the Telecommunications Act
of 1996, Docket No. 2000-849

Dear Mr. Dinan:

On October 18, 2001, Verizon New England Inc., d/b/a Verizon Maine (Verizon) filed a set of Checklist, Measurements, and OSS Declarations with the Commission and asked that the Commission review the filing for compliance with Section 271 of the Telecommunications Act of 1996 (the "Act").

In response to Verizon's filing, the Commission re-initiated its proceeding to review Verizon's compliance with Section 271 by establishing a procedural schedule which allowed for the filing of declarations and comments by interested parties, the conducting of discovery, and the holding of two days of hearings. Our inquiry was not a formal investigation under Maine law, but it had many of the elements of such a case and afforded all interested parties an opportunity to be heard on this matter. Our review of the record of this proceeding and other related material, indicates that, upon Verizon's assurance that it will comply with the conditions described below, Verizon meets the statutory requirements of Section 271 relating to opening the local exchange and exchange access markets in Maine to competition.

Conditions

1. Verizon will file a wholesale tariff for Maine no later than October 1, 2002. In the interim, CLECs shall be allowed to amend their interconnection agreements with Verizon in such a manner that enables them to negotiate the inclusion of a single UNE (and any terms and conditions related to the single UNE) rather than be required to sign a multi-part or omnibus amendment which contains provisions unrelated to the single UNE.
2. Verizon will implement in Maine as soon as possible a new procedure which will allow CLECs to order interoffice dark fiber consistent with the

outcome of the ordering process trials in Pennsylvania and the Washington, D.C. metropolitan areas. Verizon will attempt to meet a target of approximately 10 business days into the collocation process. On September 3, 2002, Verizon will provide the Commission with a report on the status of the trials and an updated target for Maine implementation.

3. Verizon will provision new EELs in Maine in accordance with applicable law beginning on April 1, 2002.
4. Verizon will make the following changes to the terms and conditions for provisioning dark fiber in Maine:
 - a. If a dark fiber inquiry reveals there is no dark fiber available, Verizon will, upon separate request from a CLEC, provide the CLEC with written documentation and a fiber map within 30 days of the request. The documentation will show the following information:
 - a map (hand-drawn, if necessary) showing the spans along the most direct route and two alternative routes (where available), and indicating which spans have spare fiber, no available fiber, and construction jobs planned for the next year or currently in progress with estimated completion dates;
 - the total number of fiber sheaths and strands between points on the requested routes;
 - the number of strands currently in use or assigned to a pending service order;
 - the number of strands in use by other carriers;
 - the number of strands assigned to maintenance;
 - the number of spare strands; and
 - the number of defective strands.

The CLEC will be billed a non-recurring charge per request for cable documentation to reimburse VZ-Maine for the costs incurred in providing the CLEC with the Documentation. Until the Commission approves a Maine-specific rate for providing this information, Verizon may charge the NH cable documentation rate of \$132.02.

- b. In the event Verizon must perform emergency cable restoration to its facilities, all efforts will be made to restore the CLECs' leased unbundled dark fiber pairs in the same manner as other fibers in the same cable sheath using Verizon's standard restoration procedures.

- c. If an entire ribbon degrades and Verizon-ME would in the ordinary course of business repair the fiber, it shall repair all of the strands in the ribbon, regardless of who uses the individual strands.
 - d. Verizon will file a dark fiber tariff for Maine by May 1, 2002. In the interim, Verizon will provide access to dark fiber to CLECs in Maine consistent with its policy in Rhode Island, as set forth in section 10.2.1(G) of Verizon RI's wholesale tariff, so as to provision continuous dark fiber through one or more intermediate central offices without requiring the CLEC to be collocated at any such offices.
- 5. Verizon will file redacted copies of all customer-specific contracts with the Commission within 30 days of the signing of the contract. The Commission will make these copies available only to CLECs/resellers.
- 6. Verizon will participate in the *Rapid Response Process* outlined in Attachment A. On or after September 1, 2002, the Commission will evaluate the effectiveness of the Rapid Response Process and whether the process should be codified in the Commission's Rules.
- 7. Verizon shall provide the Commission with a quarterly report which identifies any *modifications* ordered by the Commissions in any former Bell Atlantic state that substantially alter Verizon's obligations with respect to the checklist items described at the Telecommunications Act Section 271(c)(2)(B) subsections: (i) interconnection and collocation; (ii) access to UNEs; (iv) unbundled loops; (v) unbundled transport; and (xiv) resale. The report should also: (1) indicate whether Verizon will propose the modifications in Maine; (2) the time at which such offering will be made; and/or (3) the reasons why the offering will not be available in Maine.

Performance Assurance Plan

The Commission believes that Verizon's participation in a Performance Assurance Plan (PAP) is necessary to ensure that Verizon continues to meet its Section 271 obligations after entering into the long-distance market. The Commission has reviewed the PAP proposal made by Verizon, the PAPs suggested by Staff and AT&T, and the comments by all the parties relating to the PAP, and determines that the New York PAP proposed by Verizon Maine should be adopted, subject to the modifications specified below, as an appropriate mechanism to ensure continued post-entry Section 271 compliance by Verizon.¹ Reaching this determination was difficult given Verizon's desire for expedited review and the complexities of the New York PAP. The Commission continues to be interested in the potential effectiveness of the New Jersey PAP and plans to collect data which could assist in any future review and modification of the PAP we adopt today. We reserve the right, to the extent of our legal authority, to

¹Commissioner Nugent dissents from the decision to adopt the New York PAP.